

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 11
)	
Circuit City Stores, Inc., <u>et al.</u> ,)	Case No. 08-35653
)	
Debtors.)	(Jointly Administered)

**MOTION FOR EXAMINATION AND ORDER DIRECTING
CREDITOR, NORTH PLAINFIELD VF LLC, TO PRODUCE DOCUMENTS
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE RULE 2004**

Creditor, Schimenti Construction Company, LLC (“Movant” or “Schimenti Construction”), respectfully moves the Court to issue an Order directing Creditor, North Plainfield VF LLC (“N Plainfield VF”), to appear for examination and produce documents pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure. In support of this Motion, Schimenti Construction represents as follows:

1. On November 10, 2009, Circuit City Stores, Inc. (the “Debtor”) filed a voluntary petition seeking relief under Chapter 11 of Title 11 of the United States Bankruptcy Code.
2. Schimenti Construction has a claim that is partially secured and unsecured against the Debtor arising in part from a contractual agreement for construction and fit-out work of Debtor’s store located at 1200 Route 22 East, North Plainfield, New Jersey (the “N Plainfield Store” or the “N Plainfield Project”).

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3. Prior to executing the construction contract referenced above, on or about August 23, 2006, Debtor entered into a non residential lease agreement with N Plainfield VF for the premises on which the N Plainfield Store is located (the "Lease Agreement").

4. Rule 2004 of the Federal Rules of Bankruptcy Procedure provides that "[u]pon motion of any party in interest, the Court may order the examination of any entity." Fed. R. Bankr. P. 2004. The scope of the examination is broad, including inquiry into the "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate." Id.

5. Examination of N Plainfield VF is necessary for Schimenti Construction to determine whether the Lease Agreement or any other agreement by and between N Plainfield VF and the Debtor provided for allowances for the work performed by Schimenti Construction; and to determine whether the Lease Agreement required either N Plainfield VF and/or the Debtor to hold Schimenti Construction's earned contract retainage in a separate escrow account.

6. In order to have the examination proceed efficiently, and pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, it is necessary that N Plainfield VF, produce the documents described in Exhibit A hereto as soon as practicable before the examination.

7. Schimenti proposes to conduct the examination of N Plainfield VF pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure at the offices of LeClair Ryan at Riverfront Plaza, East Tower, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219 on **MARCH 12, 2009** at 10:00 a.m. The examination shall be continued from day to day, excluding weekends and holidays, if not completed on that date.

WHEREFORE, Creditor, Schimenti Construction, respectfully requests that the Court issue an Order:

1. Directing N Plainfield VF to designate a representative or other designee to appear for examination and to testify as set forth above and pursuant to Rule 2004 of the Federal Rules

of Bankruptcy Procedure on **MARCH 12, 2009** at 10:00 a.m. at the offices of LeClair Ryan at Riverfront Plaza, East Tower, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219; and

2. Directing N Plainfield VF to produce, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, all documents described in **Exhibit A** attached hereto at the offices of LeClair Ryan at Riverfront Plaza, East Tower, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219 no later than the close of business on **March 6, 2009**.

Respectfully submitted,

CREDITOR,
SCHIMENTI CONSTRUCTION
COMPANY, LLC

/s/ Tara L. Elgie

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-AND-

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February 2009, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and mailed, by U.S. Mail, first class, postage prepaid, to all persons appearing below:

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EXHIBIT A

GENERAL INSTRUCTIONS

A. The term “document” includes, but is not limited to, all letters, correspondence, writings, financial statements, rent rolls, operating reports, bank statements, bank reconciliations, receipts, invoices, canceled checks, check registers, cash receipts, leases, deeds of trust, mortgages, contracts, appraiser reports, purchase or sale agreements, proposals, and any other data compilation from which information may be obtained in the actual or constructive control or custody of the N Plainfield VF.

B. The phrase “relating to” means consisting of, referring to, reflecting, or being legally, logically, or factually connected in any way with the subject matter.

C. The “Debtor” means Circuit City Stores, Inc.

D. The term “N Plainfield VF” refers to Creditor, North Plainfield VF, LLC and any and all parent or subsidiary entities and all of its members, employees or other representatives.

E. The term “Estate” means the bankruptcy estate of the Debtor in accordance with 11 U.S.C. § 541.

DOCUMENTS TO PRODUCE

The documents to be produced include all of the following:

1. Any and all documents relating to Debtor’s liabilities to N Plainfield VF.
2. Any and all agreements by and between Debtor and N Plainfield VF including all exhibits and/or amendments thereto.
3. Any and all documents relating to any claims by N Plainfield VF against the Debtor.
4. All purchase and sale receipts and related documentation for equipment, machinery, furniture, and other assets purchased by N Plainfield VF and affixed or installed in the space which is the subject of the Lease Agreement by and between N Plainfield VF and the Debtor.

5. Copies of all leases for personal or real property entered into by and between N Plainfield VF and the Debtor, including any and all leases by and between the Debtor and any business entities related to N Plainfield VF.

6. Any and all written communications by and between the Debtor and N Plainfield VF.

7. Any and all written communications by and between N Plainfield VF and any person or entity relating to the space which is the subject of the Lease Agreement by and between N Plainfield VF and the Debtor.

8. Any and all documents, including without limitation accounting records and reports, reflecting the amounts due and owing and paid under any lease agreement by and between Debtor and N Plainfield VF.

9. Any and all documents, including without limitation accounting records and reports, reflecting allowances or other monies paid or reserved for the construction or fit out of the space which is the subject of the lease agreement by and between Debtor and N Plainfield VF.

10. Any and all documents identifying the employees, members or other representatives of N Plainfield VF that communicated with Debtor and/or Schimenti Construction regarding the work performed at the space which is the subject of the lease agreement by and between Debtor and N Plainfield VF.